

AGENDA BILL APPROVAL FORM

Agenda Subject: Adoption of Resolution No. 4584, authorizing a grant agreement between the City and the Washington State Recreation and Conservation Office for the Fenster Levee Setback, Phase II project.		Date: March 30, 2010
Department: Planning and Development	Attachments: Attachment 1: Resolution No. 4584 with Exhibit A – Salmon Project Agreement, Fenster Levee Setback & Floodplain Restoration II	Budget Impact: \$53,665 Sponsor Match Sources: Storm Funds: \$35,000 Other Grant: \$18,665
Administrative Recommendation: City Council adopt Resolution No. 4584.		
Background Summary: <p>The City of Auburn and Water Resource Inventory Area 9 (WRIA 9) first identified the Fenster Levee setback project on the Green River in Auburn as a priority salmon habitat project when developing the WRIA 9 Salmon Habitat Plan in 2000. The City of Auburn applied for and received Salmon Recovery Funding funds through the Washington State Recreation and Conservation Office to complete Phase I of the Fenster Levee setback project in 2006. The City of Auburn completed Phase I of the project in 2008 which involved approximately 700 feet of levee improvement, the placement of large woody debris and rock armoring, and the planting of native riparian trees and shrubs. The City of Auburn applied for Washington State Recreation and Conservation Office Salmon Recovery Funding Board funds in 2009 in order to complete Phase II of the Fenster Levee setback project which will setback an additional segment of levee immediately adjacent to the north of the first phase of the project near River Mile 32 on the Green River. Project components include approximately 880 feet of levee setback, re-attachment of a large forested swale to the river for off-channel habitat and fish refuge, increased area for floodwater quieting and storage, removal of invasive plants, native plant revegetation, and the installation of large woody debris at the toe of the new levee. This project will allow for greater movement of the Green River during the winter high flow period and increased flood storage, providing both greater protection of downstream property, and also refugia for threatened salmon and steelhead on the Green River. The site for this phase of the project is adjacent to the</p> <p>L0405-1 O5.1.2, F5.2.20</p>		
Reviewed by Council & Committees: <input type="checkbox"/> Arts Commission <input type="checkbox"/> Airport <input type="checkbox"/> Hearing Examiner <input type="checkbox"/> Human Services <input type="checkbox"/> Park Board <input type="checkbox"/> Planning Comm. COUNCIL COMMITTEES: <input type="checkbox"/> Finance <input type="checkbox"/> Municipal Serv. <input checked="" type="checkbox"/> Planning & CD <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Other _____		Reviewed by Departments & Divisions: <input type="checkbox"/> Building <input type="checkbox"/> Cemetery <input type="checkbox"/> Finance <input type="checkbox"/> Fire <input checked="" type="checkbox"/> Legal <input checked="" type="checkbox"/> Public Works <input type="checkbox"/> Information Services <input type="checkbox"/> M&O <input type="checkbox"/> Mayor <input type="checkbox"/> Parks <input checked="" type="checkbox"/> Planning <input type="checkbox"/> Police <input type="checkbox"/> Human Resources
Action: Committee Approval: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Council Approval: <input type="checkbox"/> Yes <input type="checkbox"/> No Referred to _____ Until ____/____/____ Tabled _____ Until ____/____/____ <div style="text-align: right;">Call for Public Hearing ____/____/____</div>		
Councilmember: Norman		Staff: Andersen
Meeting Date: April 5, 2010		Item Number: IX.B.4

Agenda Subject: Adoption of Resolution No. 4584, authorizing a grant agreement between the City and the Washington State Recreation and Conservation Office for the Fenster Levee Setback, Phase II project.	Date: March 30, 2010
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downstream end of an intact two-mile long riparian corridor along the Green River within the Fenster Nature Park (Auburn) and the Auburn Narrows Natural Area (King County). As a part of Fenster Nature Park, the Fenster Levee setback will primarily be left in a natural state following construction with some opportunity for passive recreation.

The City's Fenster Levee Setback & Floodplain Restoration II project was approved for the full funding request of \$304,103 by the Salmon Recovery Funding Board on December 10, 2009. A grant agreement from the Washington State Recreation and Conservation Office was received by the City on March 8, 2010. The grant has a local sponsor match requirement of \$53,665 (15 percent). The City has identified \$35,000 in Storm Funds and \$18,665 in other grant funds to make up this match requirement. A budget amendment will be required for the reallocation \$35,000 of City Storm Funds and the allocation of the \$304,103 in SRFB funds. King Conservation District has authorized \$200,000 for this project, a portion of which has been identified to be used for the \$18,665 remainder of the match requirement.

RESOLUTION NO. 4 5 8 4

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF AUBURN, WASHINGTON, AUTHORIZING
THE MAYOR TO EXECUTE A GRANT AGREEMENT
BETWEEN THE CITY OF AUBURN AND THE
WASHINGTON STATE RECREATION AND
CONSERVATION OFFICE FOR THE FENSTER
LEVEE SETBACK & FLOODPLAIN RESTORATION,
PHASE II PROJECT

WHEREAS, the Fenster Levee Setback is a project identified in the *Green/Duwamish and Central Puget Sound Watershed, Water Resource Inventory Area 9, Salmon Habitat Plan, Making our Watershed Fit for a King*, dated August 2005 and ratified by the City Council of the City of Auburn ("City") by adoption of Resolution No. 3922 on October 17, 2005; and

WHEREAS, the City and King County Water and Land Resources Division (WLRD) entered into an interlocal agreement for the performance of work for the Fenster Levee Setback project as authorized by the Auburn City Council by adoption of Resolution No. 4054 on July 17, 2006; and

WHEREAS, the City and King County WLRD have completed the construction of setback levee improvements and habitat restoration as part of Phase I of the Fenster Levee Setback project; and

Whereas, on November 17, 2008 the City Council adopted Resolution No. 4415 authorizing the City's acceptance of a \$130,000 grant from the King Conservation District for the acquisition of the Smith Property which was identified

as a critical segment of the Fenster Levee Setback project, and did subsequent purchase the property, thereby completing City ownership of the proposed project site; and

WHEREAS, Washington State Recreation and Conservation Office is a State agency responsible for the administration of Salmon Recovery Funding Board funds for salmon recovery projects; and

WHEREAS, the City has been awarded a Washington State Salmon Recovery Funding Board grant in the amount of \$304,103 for the design, permitting, and construction of the Fenster Levee Setback, Phase II Project.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF AUBURN, WASHINGTON, HEREBY RESOLVES as follows:

Section 1. The Mayor is hereby authorized to execute a Grant Agreement between the City and Washington State Recreation and Conservation Office in the total amount of \$304,103, or such amount as may be awarded to the City under the Grant Agreement, in substantial conformity with the agreement attached hereto, marked as Exhibit "A" and incorporated herein by this reference.

Section 2. The Mayor is hereby authorized to implement such administrative procedures as may be necessary to carry out the directions of this legislation.

Section 3. That this Resolution shall take effect and be in full force upon passage and signatures hereon.

Dated and Signed this _____ day of _____, 2010.

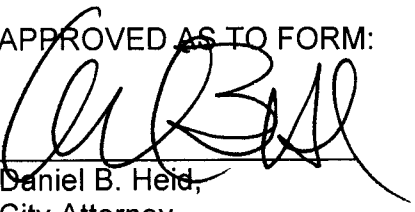
CITY OF AUBURN

PETER B. LEWIS
MAYOR

ATTEST:

Danielle E. Daskam,
City Clerk

APPROVED AS TO FORM:



Daniel B. Heid,
City Attorney

Salmon Project Agreement

Salmon Funding Accounts

Project Sponsor: City of Auburn
Project Title: Fenster Levee Setback & Floodplain Restoration II

Project Number: 09-1429R
Approval Date: 12/10/2009

A. PARTIES OF THE AGREEMENT

This project grant agreement (agreement) is entered into between the State of Washington by and through the Salmon Recovery Funding Board (SRFB), P.O. Box 40917, Olympia, Washington 98504-0917 and City of Auburn (sponsor), 25 W Main St, Auburn, WA 98001-4998 and shall be binding on the agents and all persons acting by or through the parties.

B. PURPOSE OF AGREEMENT

This agreement sets out the terms and conditions by which a grant is made from the Salmon Funding Accounts of the State of Washington. The grant is administered by the Recreation and Conservation Office (RCO) to the sponsor for the project named above.

C. DESCRIPTION OF PROJECT

The subject project is described on the attached project summary.

D. PERIOD OF PERFORMANCE

The project reimbursement period shall begin on December 10, 2009 and end on December 31, 2013. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this agreement or specifically provided for by funding board/office policy.

Requests for time extensions are to be made at least 60 days before the agreement end date. If a request for a time extension is not made at least 60 days before the agreement end date, the request *may be denied*. If the request is made after the agreement end date, the time extension *will be denied*.

E. ON-GOING OBLIGATION

The Project Sponsor's ongoing obligation for the above project under this Agreement is to provide maintenance of the site or facility to serve the purpose for which it was intended for a minimum of ten (10) years, or more as specified in the Landowner Agreement, after the final payment unless the site or facility is rendered unusable for the purpose it was intended by an act of nature.

F. PROJECT FUNDING

The total grant award provided by the funding board/office for this project shall not exceed \$304,103.00. The funding board/office shall not pay any amount beyond that approved for funding of the project. The sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
SRFB - Salmon Federal Projects	85.00%	\$304,103.00
Project Sponsor	15.00%	\$53,665.00
Total Project Cost	100.00%	\$357,768.00

G. RIGHTS AND OBLIGATIONS

All rights and obligations of the parties to this agreement are subject to this agreement and its attachments, as now existing or hereafter amended, including the sponsor's application, project summary, eligible reimbursement activities report, and project milestones, all of which are incorporated herein.

Except as provided herein, no amendment/deletions of any of the terms or conditions of this agreement will be effective unless provided in writing. All such amendment/deletions except those concerning the period of performance, must be signed by both parties. Period of performance extensions need only be signed by RCO's director or designee.

The sponsor has read, fully understands, and agrees to be bound by all terms and conditions as set forth in these documents.

H. **COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND RCFB-SRFB POLICIES**

This agreement is governed by, and the sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter 77.85 RCW, Chapter 420 WAC, and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. **SPECIAL CONDITIONS**

None

J. **FEDERAL FUND INFORMATION**

A portion or all of the funds for this project are provided through a federal funding source.

Funds provided from the US Dept of Commerce must be reported under CFDA #11.438 - Salmon Restoration and Award Number NA08NMF4380608 for federal fiscal year 2008.

Funds provided from the US Dept of Commerce must be reported under CFDA #11.438 - Salmon Restoration and Award Number NA09NMF4380363 for federal fiscal year 2009.

If the sponsor's total federal expenditures are \$500,000.00 or more during the sponsor's fiscal-year, the sponsor is required to have a federal single audit conducted for that year in compliance with Office of Management and Budget Circular A-133. A copy of the final audit report must be provided to RCO within nine months of the end of the sponsor's fiscal year, unless a longer period is agreed to in advance by the cognizant or oversight agency.

Failure to provide required A-133 audits will lead to a suspension of payments and may lead to a suspension of RCO agreements.

K. **PROJECT AGREEMENT REPRESENTATIVE**

All written communications sent to the sponsor under this agreement will be addressed and delivered to:

Project Contact

Name: Chris Anderson
Title:
Address: 25 W Main St
Auburn, WA 98001-4998

SRFB

Recreation and Conservation Office
Natural Resources Building
PO Box 40917
Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. **ENTIRE AGREEMENT**

This agreement, with all amendments and attachments, constitutes the entire agreement of the parties. No other understandings, oral or otherwise, regarding this agreement shall exist or bind any of the parties.

M. **EFFECTIVE DATE**

This agreement, for project 09-1429R, shall be effective on signing by all parties. Reimbursements for eligible and allowable costs incurred prior to the effective date and those costs incurred within the period of performance are allowed only when this agreement is signed by all parties and an original is received by RCO. The period of performance is identified in section D.

Standard Terms and Conditions of the Project Agreement

Project Sponsor: City of Auburn

Project Number: 09-1429R

Project Title: Fenster Levee Setback & Floodplain Restoration II

Approval Date: 12/10/2009

SECTION 1. CITATIONS, HEADINGS AND DEFINITIONS

- A. Any citations referencing specific documents refer to the current version at the date of project agreement and/or any revisions in the future.
- B. Headings used in this agreement are for reference purposes only and shall not be considered a substantive part of this agreement.
- C. Definitions. As used throughout this agreement, the following terms shall have the meaning set forth below:
- acquisition - The gaining of rights of ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.
 - agreement - The accord accepted by all parties to the present transaction; this agreement, any supplemental agreements, any amendments to this agreement and any intergovernmental agreements.
 - applicant - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the funding board.
 - application - The forms and support documents approved by the funding board or its director for use by applicants in soliciting project funds administered by RCO.
 - asset - Equipment purchased by the sponsor or acquired or transferred to the sponsor for the purpose of this agreement. This definition is restricted to non-fixed assets, including but not limited to vehicles, computers or machinery.
 - cognizant or oversight agency - Federal agency responsible for ensuring compliance with federal audit requirements.
 - contractor - Shall mean one not in the employment of the sponsor who is performing all or part of the eligible activities for this project under a separate agreement with the sponsor. The term "contractor" and "contractors" means contractor(s) in any tier.
 - corporate sponsor - Any corporate form of business, including nonprofit organizations, under RCW 23, 23B and 24.
 - development/renovation - Construction of or improvement of site or site facilities.
 - director - The chief executive officer of the Recreation and Conservation Office or that person's designee.
 - elements and items - Components defined as part of the scope of work, see Section 26 B.
 - funding board - The board that authorized the funds in this agreement, either the Recreation and Conservation Funding Board (RCFB) created under chapter 79A.25.110 RCW, or the Salmon Recovery Funding Board (SRFB) created under chapter 77.85.110 RCW.
 - landowner agreement - A landowner agreement is required between a sponsor and landowner for projects located on land not owned, or otherwise controlled, by the sponsor.
 - milestone - An important event with a defined deadline for an activity related to implementation of a funded project.
 - period of performance - The time period specified in the agreement, under Section D, period of performance.
 - post evaluation summary - One of the documents used to summarize and describe the actions undertaken in the agreement.
 - project - The undertaking that is the subject of this agreement and that is, or may be, funded in whole or in part with funds administered by RCO on behalf of the funding board.
 - RCO - Recreation and Conservation Office - The state office that provides administrative support to the Recreation and Conservation Funding Board and Salmon Recovery Funding Board. RCO includes the director and staff, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this agreement by Chapters 77.85.110 and 79A.25.240 RCW.
 - reimbursement - Payment of eligible and allowable costs that have already been paid by the sponsor per the terms of the agreement.
 - restoration/enhancement - Bringing a site back to its original function as part of a natural ecosystem or improving the ecological functionality of a site.
 - sponsor - The eligible applicant who has been awarded a grant of funds and is bound by this executed agreement; includes its officers, employees, agents and successors.

SECTION 2. PERFORMANCE BY THE SPONSOR

The sponsor shall undertake the project as described in this agreement, post evaluation summary, the sponsor's application, and in accordance with the sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the funding board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 34.

Timely completion of the project is important. Failure to meet critical milestones or complete the project, as set out in this agreement, is a material breach of the agreement.

SECTION 3. ASSIGNMENT

Neither this agreement, nor any claim arising under this agreement, shall be transferred or assigned by the sponsor without prior written consent of the funding board.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the funding board undertakes to assist the sponsor with the project by providing a grant pursuant to this agreement, the project itself remains the sole responsibility of the sponsor. The funding board undertakes no responsibilities to the sponsor, or to any third party, other than as is expressly set out in this agreement. The responsibility for the implementation of the project, is solely that of the sponsor, as is the responsibility for any claim or suit of any nature by any third party related in any way to the project.

SECTION 5. INDEMNIFICATION

To the fullest extent permitted by the law, the sponsor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all claims, actions, costs, damages, or expenses of any nature arising out of or incident to the sponsor's or any contractor's performance or failure to perform the agreement. Sponsor's obligation to indemnify, defend and hold harmless also includes any claim by sponsor's agents, employees, representatives or any contractor or its employees. Sponsor's obligation to defend includes payment of any costs or attorneys' fees.

Sponsor's obligation shall not include such claims that may be caused by the sole negligence of RCO, its officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) RCO, its agents or employees and (b) the sponsor, its contractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the sponsor or its contractors, agents, or employees. The sponsor expressly agrees to waive his/her immunity under Title 51 RCW to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The sponsor and its employees or agents performing under this agreement are not officers, employees or agents of the funding board or RCO. The sponsor will not hold itself out as nor claim to be an officer, employee or agent of RCO, a funding board or of the state of Washington, nor will the sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B RCW.

The sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, RCO may, in its sole discretion, by written notice to the sponsor terminate this agreement if it is found after due notice and examination by RCO that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the sponsor in the procurement of, or performance under, this agreement.

In the event this agreement is terminated as provided above, RCO shall be entitled to pursue the same remedies against the sponsor as it could pursue in the event of a breach of the agreement by the sponsor. The rights and remedies of RCO provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law.

SECTION 8. ACKNOWLEDGMENT AND SIGNS

- A. Publications. The sponsor shall include language which acknowledges the funding contribution of the applicable grant program to this project in any release or other publication developed or modified for, or referring to, the project.
- B. Signs. The sponsor also shall post signs or other appropriate media at project entrances and other locations on the project which acknowledge the applicable grant program's funding contribution, unless exempted in funding board policy or waived by the director.
- C. Ceremonies. The sponsor shall notify RCO no later than two weeks before a dedication ceremony for this project. The sponsor shall verbally acknowledge the applicable grant program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, sponsors shall clearly state:
 - 1. The percentage of the total costs of the project that is financed with federal money;
 - 2. The dollar amount of federal funds for the project; and
 - 3. The percentage and dollar amount of the total costs of the project that is financed by nongovernmental sources.

SECTION 9. COMPLIANCE WITH APPLICABLE LAW

The sponsor will implement the agreement in accordance with applicable federal, state, and local laws, regulations and RCO and funding board policies.

The sponsor shall comply with, and RCO is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to: State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (critical areas ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

Endangered Species

For habitat restoration projects funded in part or whole with federal funds administered by the SRFB the sponsor shall not commence with clearing of riparian trees or in-water work unless either the sponsor has complied with 50 CFR 223.203 (b)(8), limit 8 or until an Endangered Species Act consultation is finalized in writing by the National Oceanic and Atmospheric Administration. Violation of this requirement may be grounds for terminating this project agreement. This section shall not be the basis for any enforcement responsibility by RCO.

Nondiscrimination Laws

The sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to: the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the agreement may be rescinded, cancelled, or terminated in whole or in part, and the sponsor may be declared ineligible for further grant awards from the funding board. The sponsor is responsible for any and all costs or liability arising from the sponsor's failure to so comply with applicable law.

Prevailing Wage

The sponsor agrees to pay the prevailing rate of wage to all workers, laborers, or mechanics employed in the performance of any part of this contract when required by state law to do so, and to comply with the provisions of the Davis-Bacon Act, other federal laws and Chapter 39.12 RCW, as amended, and the rules and regulations of the Department of Labor and Industries.

Restrictions on Grant Use

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any sponsor, or agent acting for such sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

SECTION 10. ARCHAEOLOGICAL AND CULTURAL RESOURCES

The real property acquired, developed, renovated, or restored through this grant is subject to Governor's Executive Order (EO) 05-05 or compliance with Section 106 of the National Historic Preservation Act concerning the review, analysis, and consultation with the Washington State Department of Archaeology and Historic Preservation and affected Tribes for archaeological and cultural resources. The funding board requires documented compliance with EO 05-05 or Section 106 of the National Historic Preservation Act, whichever is applicable to the project. In the event that a federal agency declines to consult, the sponsor shall comply with EO 05-05. The sponsor must comply with EO 05-05 or the National Historic Preservation Act before initiating ground disturbing activity. RCO will issue a notice to proceed (if applicable) when appropriate documentation has been received. RCO will not reimburse for construction related activity until the sponsor demonstrates compliance.

In the event that archaeological or historic materials are discovered during project activities, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification must be provided to the following: concerned Tribes' cultural staff and cultural committees, RCO, and the State Department of Archaeology and Historic Preservation. In the event that human remains are discovered during project activity, work in the location of discovery and immediate vicinity must stop instantly, the area must be secured, and notification provided to the concerned Tribe's cultural staff and cultural committee, RCO, State Department of Archaeology, the coroner and local law enforcement in the most expeditious manner possible according to RCW 68.50.

SECTION 11. HAZARDOUS SUBSTANCES

A. Definition. "Hazardous substance," as defined in Chapter 70.105D.020 (11) RCW, means:

1. Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) RCW, or any dangerous or extremely hazardous waste designated by rule pursuant to Chapter 70.105 RCW;
2. Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105. RCW;
3. Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

4. Petroleum or petroleum products; and
 5. Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee] of the department of ecology by rule to present a threat to human health or the environment if released into the environment.
 6. The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.
- B. Certification. The sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances and certify:
1. No hazardous substances were found on the site, or
 2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed "clean."
- C. Responsibility. Nothing in this provision alters the sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- D. Hold Harmless. The sponsor will defend, protect and hold harmless RCO and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

SECTION 12. RECORDS MAINTENANCE

The sponsor shall maintain books, records, documents, data and other evidence relating to this agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this agreement. Sponsor shall retain such records for a period of six years from the date RCO closes the project. At no additional cost, these records, including materials generated under the agreement, shall be subject at all reasonable times to inspection, review or audit by RCO, personnel duly authorized by RCO, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

SECTION 13. PUBLIC RECORDS

Sponsor acknowledges that the funding board is subject to chapter 42.56 RCW and that this agreement shall be a public record as defined in chapter 42.56 RCW. Additionally, in compliance with RCW 77.85.130 (8), sponsor agrees to disclose any information in regards to expenditure of any funding received from the funding board.

SECTION 14. ACCESS TO DATA

In compliance with chapter 39.29 RCW, the sponsor shall provide access, when requested, to data generated under this agreement to RCO, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the sponsor's reports, including computer models and methodology for those models.

SECTION 15. TREATMENT OF ASSETS

- A. Assets shall remain in the possession of the sponsor for the duration of the project or applicable grant program. When the sponsor discontinues use of the asset(s) for the purpose for which it was funded, RCO will require the sponsor to deliver the asset(s) to RCO, dispose of the asset according to RCO policies, or return the fair market value of the asset(s) to RCO. Assets shall be used only for the purpose of this agreement, unless otherwise provided herein or approved by RCO in writing.
- B. The sponsor shall be responsible for any loss or damage to assets which results from the negligence of the sponsor or which results from the failure on the part of the sponsor to maintain and administer that asset in accordance with sound management practices.

SECTION 16. RIGHT OF INSPECTION

The sponsor shall provide right of access to the project to RCO, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this agreement.

If a landowner agreement has been executed, it will further stipulate and define the funding board and RCO's right to inspect and access lands acquired or developed with funding board assistance.

SECTION 17. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in policy documents approved by the funding boards or RCO. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the funding board.

SECTION 18. DEBARMENT CERTIFICATION FOR FEDERALLY FUNDED PROJECTS

"Lower tier participants" refer to any sponsor receiving a federal grant through RCO. Lower tier participants also refer to any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor funded by RCO. In this section, the sponsor certifies to RCO that neither they nor their subgrantees are suspended or debarred. Any grantee, subgrantee, or contractor of any grantee or subgrantee from the original sponsor certifies to the sponsor directly.

For any federally funded projects, sponsors are required to follow any federal requirements. Furthermore any federal funding requirements will be passed on to any other entity to whom the sponsor passes funds (also referred to as a lower tier participant).

The sponsor (prospective lower tier participant) certifies, by signing this agreement, that neither it nor its principals nor any other lower tier participants are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. The sponsor (prospective lower tier participant) shall provide immediate written notice to RCO if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Should the prospective lower tier participant enter into a covered transaction with another person at the next lower tier, the sponsor (prospective lower tier participant) agrees by signing this agreement that it will verify that the person with whom it or its lower tier participant intends to do business is not excluded or disqualified. The sponsor (prospective lower tier participant) will do this by:

- A. Checking the federal Excluded Parties List System (www.epls.gov) for that person; or
- B. Collecting a certification from that person; or
- C. Adding a clause or condition to the covered transaction with that person.

The sponsor (prospective lower tier participant) agrees by signing this agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous.

SECTION 19. PROJECT FUNDING

- A. **Additional Amounts.** The funding board shall not be obligated to pay any amount beyond the dollar amount as identified in this agreement, unless an additional amount has been approved in advance by the funding board or director and incorporated by written amendment into this agreement.
- B. **Before the Agreement.** No expenditure made, or obligation incurred, by the sponsor before the effective date of this agreement shall be eligible for grant funds, in whole or in part, unless specifically provided for by funding board policy, such as a waiver of retroactivity or program specific eligible pre-agreement costs. The dollar amounts identified in this agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- C. **After the period of performance.** No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the funding board may have under this agreement, the grant amounts identified in this agreement shall be reduced to exclude any such expenditure from participation.

SECTION 20. PROJECT REIMBURSEMENTS

- A. **Sponsors may only request reimbursement after eligible and allowable costs have already been paid and remitted to their vendors.**
- B. **Compliance and Payment.** The obligation of RCO to pay any amount(s) under this agreement is expressly conditioned on strict compliance with the terms of this agreement by the sponsor.
- C. **Compliance and Retainage.** RCO reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the sponsor until the project has been completed. A project is considered "complete" when:
 - 1. All approved or required activities outlined in the agreement are done;
 - 2. On-site signs are in place (if applicable);
 - 3. A final project report is submitted to RCO;
 - 4. Any other required documents are complete and submitted to RCO;
 - 5. A final reimbursement request is submitted to RCO;
 - 6. The completed project has been accepted by RCO;
 - 7. Final amendments have been processed; and
 - 8. Fiscal transactions are complete.
- D. **Reimbursement Request Frequency.** Sponsors are encouraged to send RCO a reimbursement request at least quarterly. Sponsors are required to submit a reimbursement request to RCO, at a minimum for each project at least once a year for reimbursable activities occurring between July 1 and June 30. Sponsors must refer to current RCO policies and procedures regarding reimbursement requirements.

SECTION 21. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this agreement are limited to grants approved by the SRFB and must comply with SRFB policy. See WAC 420-12-060 (5).

SECTION 22. RECOVERY OF PAYMENTS

In the event that the sponsor fails to expend funds under this agreement in accordance with state and federal laws, and/or the provisions of the agreement, RCO reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The sponsor shall reimburse RCO for any overpayment or erroneous payments made under the agreement. Repayment by the sponsor of such funds under this recovery provision shall occur within 30 days of demand by RCO. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

SECTION 23. COVENANT AGAINST CONTINGENT FEES

The sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this agreement on an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the sponsor for the purpose of securing business. RCO shall have the right, in the event of breach of this clause by the sponsor, to terminate this agreement without liability or, in its discretion, to deduct from the agreement grant amount or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 24. PROVISIONS APPLYING TO DEVELOPMENT/RESTORATION PROJECTS

The following provisions shall be in force only if the project described in this agreement is for development/restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- A. Document Review and Approval. The sponsor agrees to submit one copy of all development/restoration or construction plans and specifications to RCO for review. Review and approval by RCO will be for compliance with the terms of this agreement.
- B. Contracts for Development or Restoration. Sponsor shall award all contracts for construction, development or restoration using whatever method is appropriate and required for the sponsor.
- C. Contract Change Order. Only change orders that impact the amount of funding or changes to the scope of the project as described to and approved by the funding board or RCO must receive prior written approval.
- D. Control and Tenure. The sponsor must provide documentation that shows appropriate tenure (land owner agreement, long term lease agreement, easement, or fee simple ownership) for the land proposed for development or restoration. The documentation must meet current RCO requirements.
- E. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the sponsor shall insert the following nondiscrimination clause in each contract for construction of this project:

"During the performance of this contract, the contractor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."
- F. Use of Best Management Practices. Project sponsors are encouraged to use best management practices developed as part of the Washington State Aquatic Habitat Guidelines (AHG) Program. The best management practices are described in three documents: "Stream Habitat Restoration Guidelines: Final Draft", 2004; "Design of Road Culverts for Fish Passage", 2003; and "Integrated Streambank Protection Guidelines", 2002. These documents and other information can be found on the AHG website.

SECTION 25. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the project described in this agreement is for the acquisition of interest in real property (including easements) for outdoor recreation, habitat conservation, or salmon recovery purposes:

- A. Evidence of Land Value. Before disbursement of funds by RCO as provided under this agreement, the sponsor agrees to supply evidence to RCO that the cost of the property rights acquired has been established according to funding board policy.
- B. Evidence of Title. The sponsor agrees to show the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Legal Description of Real Property Rights Acquired. The legal description of the real property rights purchased with funding assistance provided through this project agreement (and protected by a recorded conveyance of rights to the State of Washington) shall be incorporated into the agreement before final payment.
- D. Conveyance of Rights to the State of Washington. Document securing long-term rights for the State of Washington. When real property rights (both fee simple and lesser interests) are acquired, the sponsor agrees to execute an appropriate document conveying certain rights and responsibilities to RCO, on behalf of the State of Washington. These documents include a Deed of Right, Assignment of Rights, Easements and Leases. The sponsor agrees to use document language provided by RCO, to record the executed document in the County where the real property lies, and to provide a copy of the recorded document to RCO. The document required will vary depending on the project type, the real property rights being acquired and whether or not those rights are being acquired in perpetuity.

1. **Deed of Right.** The Deed of Right conveys to the people of the state of Washington the right to preserve, protect, and/or use the property for public purposes consistent with the fund source. Sponsors shall use this document when acquiring real property rights that include the underlying land. This document may also be applicable for those easements where the sponsor has acquired a perpetual easement for public purposes.
2. **Assignment of Rights.** The Assignment of Rights document transfers certain rights such as access and enforcement to RCO. Sponsors shall use this document when an easement or lease is being acquired for habitat conservation or salmon recovery purposes. The Assignment of Rights requires the signature of the underlying landowner and must be incorporated by reference in the easement document.
3. **Easements and Leases.** The sponsor may incorporate required language from the Deed of Right or Assignment of Rights directly into the easement or lease document, thereby eliminating the requirement for a separate document. Language will depend on the situation; sponsor must obtain RCO approval on the draft language prior to executing the easement or lease.

E Real Property Acquisition and Relocation Assistance

1. When federal funds are part of this agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
2. When state funds are part of this agreement, the sponsor, if required by law, agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26.010 RCW, and Chapter 468-100 WAC.
3. **Housing and Relocation.** In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this project, the sponsor agrees to provide any housing and relocation assistance required.

F Buildings and Structures. In general, grant funds are to be used for outdoor recreation, habitat conservation, or salmon recovery. Sponsors agree to remove or demolish ineligible structures. Sponsors must consult RCO regarding compliance with section 10 - Archaeological and Cultural Resources before structures are removed or demolished.

G Archaeological and Cultural Resources. The sponsor agrees that any real property interests acquired under this agreement, if to be developed in the future, is subject to section 10 (Archaeological and Cultural Resources) prior to any ground disturbing activity.

SECTION 26. RESTRICTION ON CONVERSION OF REAL PROPERTY AND/OR FACILITIES TO OTHER USES

The sponsor shall not at any time convert any real property or facility acquired, developed, and/or restored pursuant to this agreement to uses other than those purposes for which funds were approved without prior approval of the funding board in compliance with applicable statutes, rules, and funding board policies. It is the intent of the funding board's conversion policy, current or as amended in the future, that all real property or facilities acquired, developed and/or restored with funding assistance remain in the public domain in perpetuity unless otherwise identified in the agreement or as approved by the funding board.

When a conversion has been determined to have occurred, the sponsor is required to remedy the conversion per established funding board policies.

- A** A conversion occurs when one or more of the following has taken place, whether affecting an entire site or any portion of a site funded by the funding boards.
1. **Conveyance.** Property interests are conveyed for purposes inconsistent with the original grant request.
 2. **Conveyance to Ineligible Third Party.** Property interests are conveyed to a third party not otherwise eligible to receive grants in the program from which funding was derived.
 3. **Non-eligible Uses.** A use occurs that is inconsistent with the original grant request.
 4. **Non-eligible Facilities.** Non-eligible facilities are developed within the project area.
 5. **Termination of Public Use.** When public use, as described in the original grant request, is temporarily or permanently terminated or excluded.
 6. **Environmental Functions.** For habitat projects, if the property acquired, restored or enhanced no longer provides the environmental functions for which funding board grants were originally approved.

- B. Changing a project's elements and items. When approved by the funding board or director, certain elements and items may be deleted from the agreement without being considered a conversion. In the following instances the board may authorize changes without invoking the requirement to replace the elements and items. Such deletions are allowed when the funding board or director determines that the elements and items are not needed or cannot be retained due to one or more of the following conditions:
1. Obsolescence
 2. Extraordinary vandalism
 3. Acts of Nature
 4. Designed life expectancy reached
 5. Fire
 6. Permit requirements that disallow specific elements
 7. Reversion Order (*National Trails System Act 8(d)*, 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

SECTION 27. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

Sponsors must ensure that properties or facilities assisted with funding board funds, including undeveloped sites, are built, operated, used, and maintained:

- A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
- B. In a reasonably safe condition for the project's intended use.
- C. Throughout its estimated life so as to prevent undue deterioration.
- D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Facilities open to the public must:

- A. Be constructed and maintained to meet or exceed the minimum requirements of the most current local or state codes, Uniform Federal Accessibility Standards, guidelines, or rules, including but not limited to: the International Building Code, the Americans with Disabilities Act, and the Architectural Barriers Act, as updated.
- B. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- C. Be available for use at reasonable hours and times of the year, according to the type of area or facility.

SECTION 28. INCOME AND INCOME USE

- A. Income.
 1. Compatible source. The source of any income generated in a funded project or project area must be compatible with the funding source and the agreement.
 2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with funding board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunities furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.25.210 RCW).
- B. Income use. Regardless of whether income or fees in a project work site (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the agreement, unless precluded by state or federal law, the revenue may only be used to offset:
 1. The sponsor's matching funds;
 2. The project's total cost;
 3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the funding board grant;
 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the sponsor's system; and/or
 5. Capital expenses for similar acquisition and/or development.

SECTION 29. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the funding board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 30. PROVISIONS RELATED TO CORPORATE (INCLUDING NONPROFIT) SPONSORS

A corporate sponsor, including any nonprofit sponsor, shall:

- A. Maintain corporate status with the state, including registering with the Washington Secretary of State's office, throughout the sponsor's obligation to the project as identified in the agreement.
- B. Notify RCO prior to corporate dissolution. Within 30 days of dissolution the sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program and capable of complying with the terms and conditions of this agreement. RCO will process an amendment transferring the sponsor's obligation to the qualified successor if requirements are met.
- C. Sites or facilities open to the public may not require exclusive use, (e.g., members only).

SECTION 31. LIABILITY INSURANCE REQUIREMENTS FOR FIREARMS AND ARCHERY RANGE SPONSORS

- A. The sponsor of a firearms or archery range recreation project shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. The liability insurance policy, including any endorsement or addition, shall name Washington State, the funding board, and RCO as additional insured and shall be in a form approved by the funding board or director.
- C. The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the sponsor's obligation to the project as identified in this agreement.
- D. The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to RCO not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the sponsor.
- E. The requirement of Subsection A through D above shall not apply if the sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the funding board.
- F. By this requirement, the funding board and RCO does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based on such death, injury, or damage, must look to the sponsor, or others, for any and all remedies that may be available by law.

SECTION 32. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the project has been approved by the National Park Service, US Department of the Interior, for funding assistance from the federal Land and Water Conservation Fund (LWCF), the "Project Agreement General Provisions" in the LWCF State Assistance Program Federal Financial Assistance Manual are also made part of this agreement. The sponsor shall abide by these LWCF General Provisions as they now exist or are hereafter amended. Further, the sponsor agrees to provide RCO with reports or documents needed to meet the requirements of the LWCF General Provisions.

SECTION 33. FARMLAND PRESERVATION ACCOUNT

For projects funded through the Washington Wildlife and Recreation Program Farmland Preservation Account, the following sections will not apply if covered separately in a recorded RCO approved Agricultural Conservation Easement.

- Section 8 - Acknowledgement and Signs,
- Section 11 - Hazardous Substances,
- Section 17 - Stewardship and Monitoring
- Section 26 - Restriction on Conversion of Real Property and/or Facilities to Other Uses, and
- Section 25 - Provisions Applying to Acquisition Projects Sub-sections D, E, F and G.

SECTION 34. ORDER OF PRECEDENCE

This agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and/or state statutes, regulations, policies and procedures including RCO/funding board policies and procedures, applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Project agreement including attachments;
- C. Special Conditions;
- D. Standard Terms and Conditions of the Project Agreement.

SECTION 35. AMENDMENTS

This agreement may be amended by mutual agreement of the parties only. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties. Period of performance extensions and minor scope adjustments need only be signed by RCO's director or designee.

SECTION 36. LIMITATION OF AUTHORITY

Only RCO or RCO's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this agreement is not effective or binding unless made in writing and signed by RCO.

SECTION 37. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver or breach of any provision of the agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the agreement unless stated to be such in writing, signed by the director, or the director's designee, and attached to the original agreement.

SECTION 38. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The funding board and RCO rely on the sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this agreement.

SECTION 39. TERMINATION AND OTHER REMEDIES

The funding board and RCO will require strict compliance by the sponsor with all the terms of this agreement including, but not limited to the requirements of the applicable statutes, rules and all funding board and RCO policies, and with the representations of the sponsor in its application for a grant as finally approved by the funding board.

The funding board or the director may suspend or terminate the obligation to provide funding to the sponsor under this agreement:

- A. In the event of any breach by the sponsor of any of the sponsor's obligations under this agreement; or
- B. If the sponsor fails to make progress satisfactory to the funding board or director toward completion of the project by the completion date set out in this agreement. Included in progress is adherence to milestones and other defined deadlines.

In the event this agreement is terminated by the funding board or director, under this section or any other section after any portion of the grant amount has been paid to the sponsor under this agreement, the funding board or director may require that any amount paid be repaid to RCO for redeposit into the account from which the funds were derived.

The funding board and RCO may enforce this agreement by the remedy of specific performance, which usually will mean completion of the project as described in this agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to RCO. No remedy available to the funding board or RCO shall be deemed exclusive. The funding board or RCO may elect to exercise any, a combination of, or all of the remedies available to it under this agreement, or under any provision of law, common law or equity.

SECTION 40. NON-AVAILABILITY OF FUNDS

If amounts sufficient to fund the grant made under this agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to RCO for expenditure for this agreement in any biennial fiscal period, RCO shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If RCO participation is suspended under this section for a continuous period of one year, RCO's obligation to provide any future funding under this agreement shall terminate. Termination of the agreement under this section is not subject to appeal by the sponsor.

SECTION 41. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this agreement, RCO may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this agreement, in whole or in part. If this agreement is so terminated, RCO shall be liable only for payment required under the terms of this agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 42. DISPUTE HEARING

Except as may otherwise be provided in this agreement, when a dispute arises between the sponsor and the funding board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the sponsor, one person chosen by the director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed on, the third person shall be chosen by the funding board's chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based on written material if the parties so agree. The disputes panel shall be governed by the provisions of this agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 43. ATTORNEYS' FEES

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney fees and costs.

SECTION 44. GOVERNING LAW/VENUE

This agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this agreement, venue shall be proper only in Thurston County Superior Court. The sponsor, by execution of this agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this agreement is between the funding board and a federally recognized Indian Tribe, the following governing law/venue applies:

- A. The State of Washington agrees that it shall initiate any lawsuit against a federally recognized Indian Tribe arising out of or relating to the performance, breach or enforcement of this agreement in Federal Court. Interpretation shall be according to the law of the State of Washington. In the event that the Federal Court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court, but the parties agree that the matter shall not be pursued in superior court unless there is a Federal Court determination that it lacks subject matter jurisdiction.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable on the parties. Any money judgment or award against a Tribe, tribal officers and members, or the State of Washington and its officers and employees may exceed the amount provided for in Section F- Project Funding of the Agreement in order to satisfy the judgment.
- C. The Tribe hereby waives its sovereign immunity as necessary to give effect to this section, and to the implementation of any judgment. This waiver is only for the benefit of the Tribe and State and shall not be enforceable by any third party or by any assignee or delegate of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

SECTION 45. SEVERABILITY

The provisions of this agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the agreement.

**Salmon Program
Federal Recovery Projects
Post-Evaluation Project Summary**

TITLE: Fenster Levee Setback & Floodplain Restoration II			NUMBER: 09-1429R (Restoration)
SPONSOR: City of Auburn			STATUS: Board Funded
COSTS:			EVALUATION SCORE: BOARD RANKING:
Salmon Federal Projects	\$304,103	85%	SPONSOR MATCH: Appropriation \ Cash Grant - Local
Local	\$53,665	15%	
Total	\$357,768	100%	

DESCRIPTION:

The site is adjacent to the downstream end of an intact two-mile long riparian corridor along the Green River within the Fenster Nature Park (Auburn) and the Auburn Narrows Natural Area (King County) and is adjacent to two SRFB funded restoration projects. This proposal entails setting back the final approximately 880-foot long segment of the Fenster Levee that has not already been set back from its existing location at the top of the bank in order to restore instream, riparian and floodplain habitat. This levee setback project would complete years of work by the city and the county to set back or completely remove all of the levees within a two-mile stretch of high quality habitat between this proposed project site and the SR-18 bridge.

The area is largely vegetated by deciduous trees (some of which are relatively mature) and shrubs. An existing swale lies landward of the current levee prism, which is immediately adjacent to the river bank. As a result, the floodplain is disconnected from the river and cannot serve as off-channel habitat or help to attenuate fast water velocities during floods when large numbers of juvenile salmonids including ESA-listed Chinook and steelhead are either incubating or rearing in this part of the Green River. This segment of the Green River is also heavily used by several species of salmon and trout for spawning and migration. After construction of the levee setback, the site will be replanted and monitored by the Veteran's Conservation Corps in partnership with the City of Auburn.

LOCATION INFORMATION:

Green River Fenster Levee, City of Auburn

LEAD ENTITY ORG: WRIA 9 LE (King County)

COUNTY: King

WRIA: Duwamish-Green (9)

GOAL & OBJECTIVE:

The goal of the project is to improve instream morphology and habitat in salmon bearing streams.
The objective of the project is to increase instream cover, spawning, and resting areas.

SALMON INFORMATION: (* indicates primary)

Species Targeted

Bull Trout
Chinook (Threatened (06/06))*
Chum (Not Warranted (06/06))
Coho (Species of Concern (06/06))

Cutthroat
Pink
Sockeye
Steelhead (Proposed Threatened (06/06))

Habitat Factors Addressed

Biological Processes
Channel Conditions*
Floodplain Conditions

Riparian Conditions
Streambed Sediment Conditions
Water Quality

FISCAL YEAR: 2010

DATE PRINTED: March 8, 2010

Eligible Reimbursement Activities Report

Project Sponsor: City of Auburn
 Project Title: Fenster Levee Setback & Floodplain Restoration II

Project Number: 09-1429 R
 Approval: 12/10/2009

Restoration Items:

Worksite	Element	Item	Unit	Quantity	Description
#1, Fenster Levee Setback Phase II	Architectural & Engineering	A & E development	Lump Sum	1.00	
#1, Fenster Levee Setback Phase II	In-Stream Habitat	Channel reconfiguration	Linear ft	333.00	Remove existing rock armor & levee fill, excavate low bench
#1, Fenster Levee Setback Phase II	In-Stream Habitat	Cultural resources	Lump sum	1.00	Cultural resources survey to comply with Exec. Order 05-05
#1, Fenster Levee Setback Phase II	In-Stream Habitat	Dike removal/setback	Linear ft	880.00	
#1, Fenster Levee Setback Phase II	In-Stream Habitat	Permits	Lump sum	7.00	
#1, Fenster Levee Setback Phase II	In-Stream Habitat	Plant removal/control	Acres	0.80	

Milestone Report By Project

Project Number: 09-1429 R
Project Name: Fenster Levee Setback & Floodplain Restoration II
Sponsor: Auburn City of
Project Manager: Tara Galuska

X	I	Milestone	Target Date	Comments/Description
		Project Start	12/10/2009	
		RFP Complete	05/01/2010	
	I	Progress Report Submitted	07/15/2010	REQUIRED. Enter into PRISM
	I	Annual Project Billing	07/31/2010	REQUIRED
	I	Cultural Resources Completed	03/01/2011	
	I	Progress Report Submitted	03/15/2011	REQUIRED. Enter into PRISM
	I	Annual Project Billing	07/31/2011	REQUIRED
	I	A&E Plans Submitted	10/01/2011	
	I	Applied for Permits	11/30/2011	City of Auburn, state and federal permits
	I	Progress Report Submitted	03/15/2012	
	I	Bid Awarded/Consultant Hired	06/01/2012	
	I	Construction Started	06/30/2012	Includes clearing, cut, fill, and haul
	I	Annual Project Billing	07/31/2012	REQUIRED
	I	Progress Report Submitted	03/15/2013	
	I	Construction Complete	04/30/2013	Includes plantings and LWD placement, complete
	I	Annual Project Billing	07/31/2013	REQUIRED
		Monitor/Steward Plan Submitted	11/30/2013	Stewardship Plan required prior to closing
	I	Project Complete	12/31/2013	PROJECT CLOSING. All expenditures must occur prior to this date.
		Final Docs/Billing to Mgmt Agy	01/31/2014	Sponsor has 90 days from project complete date to submit all billings and final report.

X = Milestone Complete

I = Critical Milestone

Press Release Template

City of Auburn offered grant to restore land for salmon recovery.

(Auburn) - City of Auburn was awarded a grant of \$304,103.00 from the Salmon Program. The grant was awarded by the Salmon Recovery Funding Board (SRFB), and will be used for the following:

The City of Auburn will use this grant to set back the final 880 feet of the Fenster levee to restore habitat in the Green River and its floodplain. This project will complete years of work by Auburn and King County to set back or completely remove all levees within a 2-mile stretch of high quality habitat between this project site and the State Route 18 bridge. Combined with the work previously done, this final project reconnects the floodplain to the river, providing off-channel habitat for large numbers of juvenile salmon, including Endangered Species Act-listed Chinook and steelhead. This part of the Green River also is heavily used by several species of salmon and trout for spawning and migration. After construction of the levee setback, the site will be replanted and monitored by the Veteran's Conservation Corps in partnership with the city. In aggregate, these projects also increase storage of floodwaters, reducing the risk of flooding downstream. Auburn will contribute \$53,665 from a local grant and cash.

There were one hundred applications submitted for consideration in the Salmon Program. Each project went through an evaluation process prior to being recommended for funding. The SRFB Board approved funding for projects on Thursday, December 10, 2009.

Funding for the Salmon Program comes from funds administered by NOAA Fisheries. City of Auburn will leverage local contributions totaling \$53,665.00 with grant monies to implement the project. Total estimated project cost is \$357,768.00. SRFB is the state's administrator of the grant program.

Contact: Chris Anderson, (253) 876-1962 (sponsor project manager)
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